

106TH CONGRESS  
1ST SESSION

# S. 280

To provide for education flexibility partnerships.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1999

Mr. FRIST (for himself, Ms. COLLINS, Mrs. HUTCHISON, Mr. GORTON, Mr. BROWNBACK, Mr. VOINOVICH, Mr. ABRAHAM, Mr. HATCH, Mr. SMITH of Oregon, Mr. GREGG, Mr. THOMPSON, Mr. MURKOWSKI, Mr. COVERDELL, Mr. ALLARD, Mr. DEWINE, Mr. BENNETT, Mr. MCCAIN, Mr. MCCONNELL, Mr. ASHCROFT, Mr. WYDEN, Mr. LEVIN, Mr. KERREY, Mr. BAYH, Mrs. LINCOLN, Mr. HUTCHINSON, Mr. BREAUX, and Mr. THOMAS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To provide for education flexibility partnerships.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3   **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Education Flexibility  
5   Partnership Act of 1999”.

### 6   **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

8               (1) States differ substantially in demographics,  
9       in school governance, and in school finance and

1 funding. The administrative and funding mecha-  
2 nisms that help schools in 1 State improve may not  
3 prove successful in other States.

4 (2) Although the Elementary and Secondary  
5 Education Act of 1965 and other Federal education  
6 statutes afford flexibility to State and local edu-  
7 cational agencies in implementing Federal programs,  
8 certain requirements of Federal education statutes  
9 or regulations may impede local efforts to reform  
10 and improve education.

11 (3) By granting waivers of certain statutory  
12 and regulatory requirements, the Federal Govern-  
13 ment can remove impediments for local educational  
14 agencies in implementing educational reforms and  
15 raising the achievement levels of all children.

16 (4) State educational agencies are closer to  
17 local school systems, implement statewide edu-  
18 cational reforms with both Federal and State funds,  
19 and are responsible for maintaining accountability  
20 for local activities consistent with State standards  
21 and assessment systems. Therefore, State edu-  
22 cational agencies are often in the best position to  
23 align waivers of Federal and State requirements  
24 with State and local initiatives.

1           (5) The Education Flexibility Partnership Dem-  
 2           onstration Act allows State educational agencies the  
 3           flexibility to waive certain Federal requirements,  
 4           along with related State requirements, but allows  
 5           only 12 States to qualify for such waivers.

6           (6) Expansion of waiver authority will allow for  
 7           the waiver of statutory and regulatory requirements  
 8           that impede implementation of State and local edu-  
 9           cational improvement plans, or that unnecessarily  
 10          burden program administration, while maintaining  
 11          the intent and purposes of affected programs, and  
 12          maintaining such fundamental requirements as those  
 13          relating to civil rights, educational equity, and ac-  
 14          countability.

15          (7) To achieve the State goals for the education  
 16          of children in the State, the focus must be on results  
 17          in raising the achievement of all students, not proc-  
 18          ess.

19 **SEC. 3. DEFINITIONS.**

20          In this Act:

21           (1) LOCAL EDUCATIONAL AGENCY; STATE EDU-  
 22           CATIONAL AGENCY.—The terms “local educational  
 23           agency” and “State educational agency” have the  
 24           meaning given such terms in section 14101 of the  
 25           Elementary and Secondary Education Act of 1965.

1           (2) OUTLYING AREAS.—The term “outlying  
2       areas” means Guam, American Samoa, the United  
3       States Virgin Islands, the Commonwealth of the  
4       Northern Mariana Islands, the Republic of Palau,  
5       the Republic of the Marshall Islands, and the Fed-  
6       erated States of Micronesia.

7           (3) SECRETARY.—The term “Secretary” means  
8       the Secretary of Education.

9           (4) STATE.—The term “State” means each of  
10      the 50 States, the District of Columbia, the Com-  
11      monwealth of Puerto Rico, and each of the outlying  
12      areas.

13 **SEC. 4. EDUCATION FLEXIBILITY PARTNERSHIP.**

14       (a) EDUCATION FLEXIBILITY PROGRAM.—

15           (1) PROGRAM AUTHORIZED.—

16               (A) IN GENERAL.—The Secretary may  
17       carry out an education flexibility program under  
18       which the Secretary authorizes a State edu-  
19       cational agency that serves an eligible State to  
20       waive statutory or regulatory requirements ap-  
21       plicable to 1 or more programs or Acts de-  
22       scribed in subsection (b), other than require-  
23       ments described in subsection (c), for the State  
24       educational agency or any local educational  
25       agency or school within the State.

1 (B) DESIGNATION.—Each eligible State  
2 participating in the program described in sub-  
3 paragraph (A) shall be known as an “Ed-Flex  
4 Partnership State”.

5 (2) ELIGIBLE STATE.—For the purpose of this  
6 subsection the term “eligible State” means a State  
7 that—

8 (A)(i) has—

9 (I) developed and implemented the  
10 challenging State content standards, chal-  
11 lenging State student performance stand-  
12 ards, and aligned assessments described in  
13 section 1111(b) of the Elementary and  
14 Secondary Education Act of 1965, includ-  
15 ing the requirements of that section relat-  
16 ing to disaggregation of data, and for  
17 which local educational agencies in the  
18 State are producing the individual school  
19 performance profiles required by section  
20 1116(a) of such Act; or

21 (II) made substantial progress, as de-  
22 termined by the Secretary, toward develop-  
23 ing and implementing the standards and  
24 assessments, and toward having local edu-

1           cational agencies in the State produce the  
2           profiles, described in subclause (I); and

3           (ii) holds local educational agencies and  
4           schools accountable for meeting the educational  
5           goals described in the local applications submit-  
6           ted under paragraph (4), and for taking correc-  
7           tive actions, consistent with section 1116 of the  
8           Elementary and Secondary Education Act of  
9           1965, for the local educational agencies that do  
10          not meet the goals; and

11          (B) waives State statutory or regulatory  
12          requirements relating to education while holding  
13          local educational agencies or schools within the  
14          State that are affected by such waivers account-  
15          able for the performance of the students who  
16          are affected by such waivers.

17          (3) STATE APPLICATION.—

18          (A) IN GENERAL.—Each State educational  
19          agency desiring to participate in the education  
20          flexibility program under this section shall sub-  
21          mit an application to the Secretary at such  
22          time, in such manner, and containing such in-  
23          formation as the Secretary may reasonably re-  
24          quire. Each such application shall demonstrate  
25          that the eligible State has adopted an edu-

1           cational flexibility plan for the State that  
2           includes—

3                   (i) a description of the process the  
4                   State educational agency will use to evalu-  
5                   ate applications from local educational  
6                   agencies or schools requesting waivers of—

7                           (I) Federal statutory or regu-  
8                           latory requirements as described in  
9                           paragraph (1)(A); and

10                           (II) State statutory or regulatory  
11                           requirements relating to education;  
12                           and

13                   (ii) a detailed description of the State  
14                   statutory and regulatory requirements re-  
15                   lating to education that the State edu-  
16                   cational agency will waive.

17           (B) APPROVAL AND CONSIDERATIONS.—

18           The Secretary may approve an application de-  
19           scribed in subparagraph (A) only if the Sec-  
20           retary determines that such application dem-  
21           onstrates substantial promise of assisting the  
22           State educational agency and affected local edu-  
23           cational agencies and schools within such State  
24           in carrying out comprehensive educational re-  
25           form, after considering—

(i) the comprehensiveness and quality of the educational flexibility plan described in subparagraph (A);

(ii) the ability of such plan to ensure accountability for the activities and goals described in such plan;

(iii) the significance of the State statutory or regulatory requirements relating to education that will be waived; and

(iv) the quality of the State educational agency's process for approving applications for waivers of Federal statutory or regulatory requirements as described in paragraph (1)(A) and for monitoring and evaluating the results of such waivers.

(4) LOCAL APPLICATION.—

(A) IN GENERAL.—Each local educational agency or school requesting a waiver of a Federal statutory or regulatory requirement as described in paragraph (1)(A) and any relevant State statutory or regulatory requirement from a State educational agency shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency



1 may reasonably require. Each such application  
2 shall—

3 (i) indicate each Federal program af-  
4 fected and the statutory or regulatory re-  
5 quirement that will be waived;

6 (ii) describe the purposes and overall  
7 expected results of waiving each such re-  
8 quirement;

9 (iii) describe for each school year spe-  
10 cific, measurable, educational goals for  
11 each local educational agency or school af-  
12 fected by the proposed waiver; and

13 (iv) explain why the waiver will assist  
14 the local educational agency or school in  
15 reaching such goals.

16 (B) EVALUATION OF APPLICATIONS.—A  
17 State educational agency shall evaluate an ap-  
18 plication submitted under subparagraph (A) in  
19 accordance with the State’s educational flexibil-  
20 ity plan described in paragraph (3)(A).

21 (C) APPROVAL.—A State educational  
22 agency shall not approve an application for a  
23 waiver under this paragraph unless—

24 (i) the local educational agency or  
25 school requesting such waiver has devel-

1           oped a local reform plan that is applicable  
2           to such agency or school, respectively; and

3           (ii) the waiver of Federal statutory or  
4           regulatory requirements as described in  
5           paragraph (1)(A) will assist the local edu-  
6           cational agency or school in reaching its  
7           educational goals.

8           (5) MONITORING.—Each State educational  
9           agency participating in the program under this sec-  
10          tion shall annually monitor the activities of local  
11          educational agencies and schools receiving waivers  
12          under this section and shall submit an annual report  
13          regarding such monitoring to the Secretary.

14          (6) DURATION OF FEDERAL WAIVERS.—

15           (A) IN GENERAL.—The Secretary shall not  
16           approve the application of a State educational  
17           agency under paragraph (3) for a period ex-  
18           ceeding 5 years, except that the Secretary may  
19           extend such period if the Secretary determines  
20           that such agency's authority to grant waivers  
21           has been effective in enabling such State or af-  
22           fected local educational agencies or schools to  
23           carry out their local reform plans.

24           (B) PERFORMANCE REVIEW.—The Sec-  
25          retary shall periodically review the performance

1 of any State educational agency granting waiv-  
2 ers of Federal statutory or regulatory require-  
3 ments as described in paragraph (1)(A) and  
4 shall terminate such agency's authority to grant  
5 such waivers if the Secretary determines, after  
6 notice and opportunity for hearing, that such  
7 agency's performance has been inadequate to  
8 justify continuation of such authority.

9 (7) AUTHORITY TO ISSUE WAIVERS.—Notwith-  
10 standing any other provision of law, the Secretary is  
11 authorized to carry out the education flexibility pro-  
12 gram under this subsection for each of the fiscal  
13 years 2000 through 2004.

14 (b) INCLUDED PROGRAMS.—The statutory or regu-  
15 latory requirements referred to in subsection (a)(1)(A) are  
16 any such requirements under the following programs or  
17 Acts:

18 (1) Title I of the Elementary and Secondary  
19 Education Act of 1965.

20 (2) Part A of title II of the Elementary and  
21 Secondary Education Act of 1965.

22 (3) Subpart 2 of part A of title III of the Ele-  
23 mentary and Secondary Education Act of 1965  
24 (other than section 3136 of such Act).

1           (4) Title IV of the Elementary and Secondary  
2       Education Act of 1965.

3           (5) Title VI of the Elementary and Secondary  
4       Education Act of 1965.

5           (6) Part C of title VII of the Elementary and  
6       Secondary Education Act of 1965.

7           (7) The Carl D. Perkins Vocational and Tech-  
8       nical Education Act of 1998.

9       (c) WAIVERS NOT AUTHORIZED.—The Secretary  
10   may not waive any statutory or regulatory requirement of  
11   the programs or Acts authorized to be waived under sub-  
12   section (a)(1)(A)—

13           (1) relating to—

14                   (A) maintenance of effort;

15                   (B) comparability of services;

16                   (C) the equitable participation of students  
17       and professional staff in private schools;

18                   (D) parental participation and involve-  
19       ment;

20                   (E) the distribution of funds to States or  
21       to local educational agencies;

22                   (F) use of Federal funds to supplement,  
23       not supplant, non-Federal funds; and

24                   (G) applicable civil rights requirements;  
25       and

1           (2) unless the underlying purposes of the statu-  
2           tory requirements of each program or Act for which  
3           a waiver is granted continue to be met to the satis-  
4           faction of the Secretary.

5           (d) CONSTRUCTION.—Nothing in this Act shall be  
6           construed to affect the authority of a State educational  
7           agency that has been granted waiver authority under the  
8           following provisions of law:

9           (1) Section 311(e) of the Goals 2000: Educate  
10          America Act.

11          (2) The proviso referring to such section 311(e)  
12          under the heading “**EDUCATION REFORM**” in the  
13          Department of Education Appropriations Act, 1996  
14          (Public Law 104–134; 110 Stat. 1321–229).

15          (e) ACCOUNTABILITY.—In deciding whether to ex-  
16          tend a request for a State educational agency’s authority  
17          to issue waivers under this section, the Secretary shall re-  
18          view the progress of the State education agency, local edu-  
19          cational agency, or school affected by such waiver or au-  
20          thority to determine if such agency or school has made  
21          progress toward achieving the desired results described in  
22          the application submitted pursuant to subsection  
23          (e)(4)(A)(ii).

24          (f) PUBLICATION.—A notice of the Secretary’s deci-  
25          sion to authorize State educational agencies to issue waiv-

1   ers under this section shall be published in the Federal  
2   Register and the Secretary shall provide for the dissemina-  
3   tion of such notice to State educational agencies, inter-  
4   ested parties, including educators, parents, students, advo-  
5   cacy and civil rights organizations, other interested par-  
6   ties, and the public.

